82d Congress, 2d Session

Union Calendar No. 798
House Report No. 2511

REVISION OF THE PUBLIC LAND LAWS

REPORT

OF THE

SPECIAL SUBCOMMITTEE ON REVISION OF THE PUBLIC LAND LAWS

OF THE

COMMITTEE ON INTERIOR AND INSULAR AFFAIRS

DECEMBER 31, 1952.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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LETTER OF TRANSMITTAL

HOUSE OF REPRESENTATIVES, UNITED STATES,
COMMITTEE ON INTERIOR AND INSULAR AFFAIRS,
WASHINGTON, D. C., *December 30, 1952.*

Hon. RALPH R. ROBERTS,
Clerk, House of Representatives,
The Capitol, Washington, D. C.

DEAR MR. ROBERTS: The attached report of a special subcommittee of the Committee on Interior and Insular Affairs appointed pursuant to House Resolution 80, Eighty-second Congress, first session, to investigate and study the revision of the public land laws, has been submitted by the subcommittee having charge of the study and is hereby forwarded to the House of Representatives.

This subcommittee report was submitted too late for submission to the full committee for consideration, however, it is deemed advisable to have it printed in report form in order that the general outline of the problem may be made available to the Members of the Eighty-third Congress with the recommendation that the problem be given further study and provision made for its completion during the next Congress.

Sincerely yours,

JOHN R. MURDOCK, M. C., *Chairman.*

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82D CONGRESS, 2d Session } HOUSE OF REPRESENTATIVES { REPORT No. 2511

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DECEMBER 31, 1952.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. MURDOCK, from the Committee on Interior and Insular Affairs, submitted the following

REPORT

[Pursuant to H. Res. 80, 82d Cong., 1st sess.]

House Resolution 570 of June 30, 1952, sponsored by Hon. Lloyd M. Bentsen, Jr., of Texas, appropriated funds to initiate the revision of the public land laws, a project long necessary to be undertaken. Representative John R. Murdock, chairman of the Interior and Insular Affairs Committee, appointed a special subcommittee to proceed under this resolution. This is the report of the special subcommittee to the full committee on what it has done so far.

NEED FOR REVISION [1]

The public lands are those lands under the jurisdiction of the Secretary of the Interior, in whole or in part, which were acquired at various times by the United States by cession, purchase, or treaty from the various States, Indian tribes, or foreign nations. The total area of public domain in the United States and Alaska still in Federal ownership, not all of which is subject to the public land laws, is about 750 million acres.[2]

The public land laws are a body of laws which have been enacted from time to time as separate laws without adequate consideration being given to the relationship of the new law or amendment to the prior laws. Thus, although the homestead law was enacted in 1862,

[1] The House Judiciary Committee is engaged in preparing a codification of the nonmineral public land laws. This codification does not contemplate any substantial revision of the public land laws. It will aid but not conflict with the task of this subcommittee under House Resolution 570.

[2] The public land laws do not apply to public lands which have been withdrawn and placed under the jurisdiction of the Department of the Interior or other Federal agencies, unless the law or order making the withdrawal makes the public land laws applicable to such lands or a specific public land law provides it is applicable to such withdrawn land. Thus, the public land laws do not apply to national parks or Indian reservations, with a few exceptions. In the same way, national forests are not subject to the public land laws, except the mining and mineral leasing laws and a few other exceptions. Public lands withdrawn for wildlife refuges are not subject to most public land laws except the mineral leasing and right-of-way laws.

cash sales, under which the majority of disposals of public land continued to be made, were not ended, until the act of 1889 (25 Stat. 854).[3] In the same way, when the Materials Act of 1947 was enacted, there was no repeal of the timber and stone law, the Dead and Down Timber Act, or the many free use timber statutes. When the Public Sale Act for Alaska was enacted in 1949, likewise, there was no repeal of the trade and manufacturing site law.

Over-all consideration of the public land policy of the United States has occurred twice before. The first time was the creation, pursuant to an act of Congress, of the Public Lands Commission of 1879. The next was a commission appointed by President Theodore Roosevelt in 1903 pursuant to a congressional resolution. Very little came of the efforts of either commission.

Undoubtedly the process of piecemeal changes of the public land policy and laws of the United States, while fruitful in part, has resulted basically in an incongruous land-law system, containing no clear-cut policy to guide the administration of this vast body of laws. Each law enacted is an independent unit containing its own policy which may or may not permit its operation in accord with the policy contained in other laws which may be applicable to the same land.

PRIOR CHANGES IN LAND POLICY

Historically, the land policy of the United States in dealing with the public domain originally was one of disposal. Such disposals served a number of purposes. Thus, disposal was a means of raising funds for the Federal Treasury. The surplus in the Treasury divided divided among the States in 1837 came from this source. Second, disposal was used to promote internal improvements, such as canals, roads, railroads, and the drainage of swamps, and the financing of State educational and other institutions. Third, disposal was used as a means of promoting settlement and mineral development. These, of course, overlapped and to some extent are still in effect today.

Then came the period of conservation. Lands having value for timber and power site purposes were withdrawn from the operation of the public land laws. Lands believed or known to contain such minerals as oil, gas, coal, potash, sodium, phosphate, nitrogen, and sulfur were likewise withdrawn. This was followed by the present period, which is one primarily of management. Mineral leasing acts were passed for the development of oil, gas, oil shale, coal, sulfur, phosphates, and sodium and potash compounds. Grazing lands were put under management and the unreserved public domain in the United States was withdrawn for classification before disposal. Laws were passed for management of timber within and later outside of national forests and for the disposal of small tracts. Again, the passage of the new laws did not mean that all the prior laws which embodied a different policy were automatically repealed.

[3] The Chief of the Research and Analysis Branch, Bureau of Land Management by letter of December 9 to the subcommittee's special counsel has stated that cash sales from 1862 to 1889 totaled 80 million acres, The letter further states homestead entries totaled 58 million acres, of which 14 million acres were commuted homesteads. This last group may be considered as cash sales also since restrictions on the use of commutation to avoid homestead restrictions were not enacted till 1891. In the period from 1889 to 1900, homesteads totaled 40 million acres, of which only 4 million acres were commuted entries. (See Gates, The Homestead Law in an Incongruous Land System, 41 American Historical Review (1936) 652, 660, Peffer, The Closing of the Public Domain (1951) appendix, table III, p. 347.)

CONFERENCES WITH PUBLIC LAND USERS

It was with this background of public land law history and policy that a special subcommittee was appointed to hold a limited series of conferences with interested users of the public lands in Alaska and some of the Pacific Coast States. Time did not permit the holding of similar conferences in any of the States in the Rocky Mountain area. The purpose of these conferences, which were attended by representatives of the different interests in the use of the public lands in the area where they were held, was to obtain the viewpoint of those directly affected by the operation of many public land laws. The substance of the major suggestions and complaints made at the various conferences is set forth in this report. There were also present at these conferences representatives of Federal agencies, and in Alaska, Territorial officials. The listing of such a suggestion or complaint is not to be construed in any way as an indication of the subcommittee's position on the matter.

ALASKA CONFERENCES

The first conference was held at Anchorage, Alaska, on September 26 and statements were made by representatives of the All-Alaska Chamber of Commerce, the Anchorage Chamber of Commerce, a labor union, and the Bureau of Land Management, and by persons who had or were interested in acquiring public land for homestead and other uses. The objections and suggestions made at the Anchorage conference are as follows:

(1) The making and continuation of withdrawals should be subject to periodic review through public hearings.[4]

(2) Classification of lands will permit the protection of watersheds, timber harvesting and opening blocks of lands to settlement to which access has been provided by roads. Lands classified as suitable for homesteading should not be subject to veterans' credit for service.

(3) The Shore Space Reserve Act of 1898 should be repealed.

(4) The Small Tract Act should be made applicable to unsurveyed land.

(5) The Alaska Public Sale Act should be amended so as to increase the acreage limitation from 160 to 2,560 acres and permit negotiated sale as well.

(6) All land scrip should be registered and a date set for termination of its use.

(7) Sand, gravel, and clay should be removed from the operation of the mining laws.

(8) One simple town site law should replace the present multiple town site laws.

The second conference was held on September 29 in Juneau, Alaska. Statements were made by Governor Gruening, representatives of the Alaska Development Board, the Forest Service of the Department of Agriculture, the Fish and Wildlife Service and the Bureau of Land Management of the Department of the Interior, and the Juneau

[4] Although the prevailing belief is that more than 120 million acres of land are withdrawn in Alaska, an atlas of Alaskan withdrawals recently completed by the Bureau of Land Management of the Department of the Interior shows less than 94 million acres of withdrawn land, although this fact has not as yet been publicized. Of this total, 49 million acres are withdrawn for oil and gas development, north of the Arctic Circle. In addition, national park withdrawals, mainly Mount McKinley and Glacier Bay National Monument, total 7 million acres and national forest withdrawals total 21 million acres. Letter of December 9, 1952, from Chief, Branch of Research and Analysis, Bureau of Land Management to the subcommittee's special counsel.

Chamber of Commerce. The substance of the various additional comments and suggestions presented at this conference is as follows:

(1) There should be a separate group of land laws for the public lands in Alaska.

(2) Land should be sold at the appraised value whether it involves the sale of only a few acres or large blocks.

(3) The lands between high and low tide should be turned over to the Territory for development.

(4) Lands not suitable for timber growing should be excluded from the forests, especially when needed for expansion of adjacent communities.

PORTLAND CONFERENCE

The third conference was held in Portland, Oreg., on September 30. Statements were submitted by an attorney, representatives of State livestock associations, wildlife conservation associations, and the Forest Service, and the Bureau of Land Management. The substance of the additional suggestions and complaints is as follows:

(1) An advisory group consisting of western men representing various areas and interests using the public lands should be set up to assist in the revision of the public land laws.

(2) There should be a single right-of-way statute setting forth the general terms and conditions for obtaining any right-of-way, leaving to administrative regulations the specifications needed adequately to care for the different types of right-of-way.

(3) Grazing district boards should not be merely advisory but should have more responsibility in the handling and administration of the grazing lands.

(4) There should be security of tenure in the use of Federal grazing lands along the lines of a proposed bill drafted by the livestock associations.

(5) Many of the lands in grazing districts should be put into private ownership by sale to holders of the commensurate grazing property, not by disposition under the homestead laws. Veterans' preference should be abolished.

(6) Grazing fees should be based on the quality of the land.

(7) There should be a uniform measure of damages for trespass on Federal lands.

(8) The timber and stone law should be repealed.

(9) The mining law should be changed as follows:

(*a*) Notice of location of mining claims as well as proof of assessment work should be filed in the land office.

(*b*) Mining claims should be patented within 3 years as recommended by the Hoover Commission thus ending abuses by improper locations for nonmining purposes.

(*c*) Provision should be made for geological prospecting locations on a substantial acreage for a definite period of time during which work aimed at discovery of ore could be carried on with the right to stake a mining location after discovery.

(*d*) Pumice, volcanic cinders, and stone should be removed from the operation of the mining law.

(*e*) A mining location would only include the minerals together with the right to use so much of the surface as needed to carry on

mining and related operations and the right to use timber or other nonmineral resources needed for mining operations.

(*f*) Rights-of-way should be reserved across mining locations.

SACRAMENTO CONFERENCE

The last conference was held on October 1 at Sacramento, Calif. Statements were submitted by an attorney, representatives of conservation groups, lumber processors, stockmen, mining interests, the State Land Commission, the Forest Service, and the Bureau of Land Management. The additional complaints and suggestions are as follows:

(1) The discretionary power granted in the Taylor Grazing Act and other laws to disallow applications and entries by qualified persons should be repealed.

(2) No further withdrawals should be made except by an act of Congress specifically describing the areas and the purpose of the withdrawal.

(3) All lands withdrawn for power sites, power projects, or first or second form reclamation withdrawals should be opened to mining location subject to section 24 of the Federal Power Act.

(4) The Materials Act should be amended to prohibit the sale of materials from any lands to which the rights of any person have attached.

(5) Unless contest proceedings are filed within 12 months of final payment for the land an application for mineral patent should be granted.

(6) Contests should be heard and decided by an independent administrative agency outside of the Departments of Interior and Agriculture.

ADVISORY GROUP SHOULD BE APPOINTED [5]

The opinion of the special subcommittee, reinforced by the statements made at the four preliminary exploratory conferences, is that there can be no doubt of the urgent need for the revision of the public land laws so as to simplify and expedite the operation of these laws in the United States. This need for modernization of the public land laws is especially pressing in Alaska where there is a strong feeling that the operation of the laws is an obstacle retarding the development of Alaska.

Necessarily, the proper execution of such a vast project will require that careful consideration be given to the need for each and every provision now in the public land laws and those suggested for addition to them. To accomplish this task, an adequate staff having a full knowledge of these problems must be obtained. It is essential, however, that in the performance of this task the committee have the full benefit of the views of those people and organizations who use or are interested in the use of the public lands. Such viewpoints can best be obtained by appointing an advisory group to cooperate with the committee in the task of preparing a revision of the public land laws. The advisory group should be large enough to include representation of all the different interests concerned, not forgetting the interest of the general public, but every effort should be made to keep its member-

[5] See comment at end of report.

ship within reasonable limits so that it will not become too unwieldy for the performance of its task.

The advisory group has not as yet been selected but preliminary work looking to such selection has been done. Requests were sent to the governors and attorneys general of each of the Western States as well as the Governor of Alaska asking each of them to submit the names of several persons who were acquainted with the public land laws or interested in operations under the public land laws. Replies were received from nearly all in the group. Subsequently, letters were sent to the individuals whose names had been submitted to the subcommittee by the governors and attorneys general asking them whether they would be interested in serving on such an advisory group. Replies have been received from nearly all of these individuals. In addition, letters were sent to at least one law school in each State asking for names of members of the faculty who had a knowledge of the public land laws and a substantial number of replies have been received giving the requested information. Finally, the president of the American Bar Association was requested to submit the names of members of the association who were interested in public land matters. The president of the bar association has not as yet submitted the requested list of names.

It is believed that the Interior Committee will have available a substantial and diverse group of people from whom it may select the necessary number to constitute the advisory group. It is recommended that the members of the advisory group be compensated on a reasonable basis for the performance of their task.

RECOMMENDATIONS AS TO SUGGESTED REVISION

Some tentative conclusions have been reached as to the general approach which the proposed revision should take. These are, of course, subject to reconsideration in the light of further study. The purpose in preparing this revision of the public land laws is to secure the formulation of a coherent policy to govern the disposal and management of the public domain. This formulation does not require the adoption of an "either or" approach. Necessarily, different areas and different blocks of land must be handled differently. It would be as unwise for the United States to retain all of the remaining public domain as it would be unwise to dispose of all of it, nor can the use of withdrawals be abandoned.

This report intends to state some of the basic elements to be included in such a land policy as a basis for the revision of the public land laws. A land policy which would be wisely formulated must comprehend that there are times and places where disposal must be the prime ingredient, where withdrawal is essential, and where management is useful. Since the development of mineral deposits has always been treated separately they will be discussed later.

DISPOSAL

As a general rule transfer of Federal land in fee to non-Federal ownership should be the main basis of our land policy. This does not mean that all lands will be transferred into non-Federal ownership. Disposal of lands into non-Federal ownership should be made where

necessary to promote private development and the settlement and expansion of areas, including lands needed for public and community purposes by States, their subdivisions, and municipal corporations. In addition to such disposals, an affirmative program should be carried on to dispose of the odd lots and remnants of the public land in various areas which up to now have been retained in Federal ownership and are an economic burden to the Government.

There would have to be provision made for different methods of disposal. The present diverse laws providing for homesteads, enlarged homesteads, additional homesteads, and desert land entries should be brought into a coherent law which would permit title to be acquired to land suitable for agricultural purposes of all kinds and which would insure the development of such land for such uses. In addition, lands should be available in small tracts not to exceed 5 acres for home, small business, public, community and recreational uses by individuals, corporations, and Government entities. Land should be subject to purchase by competitive bidding for commercial and industrial uses, including housing, in large blocks and in smaller blocks, whether or not isolated from other Government lands, where such sales will not interfere with the proper management of the undisposed of public domain in the area. Title acquisition and transfer should not be unduly restricted although there should be leeway to prevent merely speculative sales. In the case of smaller blocks, adjoining land owners should have a preference right to meet the highest bid. Necessarily, there would have to be recognition of color of title claims based not only on improvement and cultivation of the land for 20 years, as the present law provides, but also on payment of taxes alone for more than 50 years. Where such a claim is more than 50 years old, it could include mineral rights. Disposals to States, their subdivisions and municipal corporations for their own uses should be at nominal prices.

To permit the proper operation of such disposal laws, the mere filing of an application should not result in acquiring a right to the land until the land has been classified for such purpose. Finally, while rights already initiated under existing law should be preserved, such law should clearly be repealed to avoid any future conflicts as to the existence of alternative methods for acquiring land for the same purposes.

WITHDRAWALS

A general law should be enacted authorizing withdrawal of land needed for governmental uses. This law should permit the exclusion of mining from such withdrawn areas except where such activity would not interfere with the purpose of the withdrawal. In such case, however, the mining operations should be subject to the necessary administrative control to assure that there will not be such interference. Provision should be made to examine withdrawals other than those for national parks, national forests, or other nonterminating uses, at stated periods, say every 5 years from their anniversary date. This will help to insure the appropriation of necessary funds to enable determinations to be made so that lands are not continued withdrawn beyond the period of their needed use.

MULTIPLE USE OF LANDS

In the administration of lands in Federal ownership, multiple uses can be permitted of the same tract of land. There should be one provision stating the general terms and conditions for permitting the use of land for various rights-of-way which would enable land to be made available not only for present day technical uses but for any which might be developed in the future. Details as to the granting and use of different types of rights-of-way must necessarily be left to regulation. Where lands cannot be made available for permanent disposal because of Government needs, provision should be made for interim leasing if such use would not interfere with the purpose for which the lands have been set aside. Proper provision should be made to permit the maintenance and rehabilitation of public domain land, and to prevent its being a source of injury to other lands, whether or not in Federal ownership. As has been stated before, mineral development has always been governed by separate provisions of the public land laws. Under the concept of multiple use of public lands however, lands containing minerals may be disposed of under the nonmineral land laws provided that such minerals are reserved for development under the mineral laws; this is now provided under some laws as to all minerals, and as to some minerals under all laws.

MINERAL LAWS

Revision of the mining law is a subject which requires careful study because of the strong feeling which exists on the matter by both the opponents and proponents of such change. The major problem in this connection has arisen from the suggestion that a mining location should not carry with it the right to use the surface for nonmining purposes, thus eliminating many locations which it is believed are being made merely as a means of acquiring rights in lands and their resources for nonmineral purposes. This will require further study before a final determination is made.

It would seem that there is substantial agreement that low grade, large quantity deposits, such as stone, sand, gravel, pumice, pumicite, and volcanic cinders, should not continue to be subject to mining location. To meet the Government's need for adequate information in this age of intensive land use the mining law should be amended to require all present and future locations to be recorded with the land office. The same requirements should apply to the filing of notice of performance of assessment of work. Failure to file such notice over a period of time should result in the termination of the claim. To meet the needs of modern technology in locating deep-seated minerals provision should be made for holding under permit larger areas for a definite period of time while geophysical prospecting is being done as a means of discovering ore bodies as the basis for making a mining location.

The mineral leasing laws, although of more recent vintage and more recently amended, also require consideration. The present provisions of the mineral leasing laws for leasing solid minerals should be similar except where technical difficulties incident to development and operations make this impossible. In view of the coal-leasing provisions in the Mineral Leasing Act of 1920, the separate Coal Leasing Act for

Alaska should be repealed. The oil and gas provisions should be amended to eliminate the 2-year blanket rental waiver.

One of the problems which require further consideration is whether competitive bidding should continue to be restricted only to those lands which are on a known producing structure. Consideration should also be given, in seeking to provide incentives for development, to whether rental in oil and gas leases should be graduated on an ascending scale, as in the case of leases for the hard-rock minerals. Consideration should also be given, as a means of promoting development, to the question of whether rentals should be waived for any year in which drilling is being conducted on a lease. These problems require further study before a determination can be made.

CONCLUSION

The report being made at this stage of the committee's progress cannot be a complete statement of the extent to which there should be an over-all revision of the public land laws. As will be noticed, some matters have only been raised for further consideration. In any event, the above statement of policy is only intended to establish a broad general outline and not go into the many details which must be included in drafting a complete public land law. It is the belief of the subcommittee that the project should be continued and proper provision made for its completion during the Eighty-third Congress.

LLOYD M. BENTSEN, Jr., *Chairman.*
CLAIR ENGLE.
SAMUEL W. YORTY.
FRED L. CRAWFORD.
NORRIS POULSON.[6]

[6] Representative Poulson does not agree with that part of the report (p. 5) dealing with appointment of an advisory group.

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